

## ***Policy Resolution Group COVID-19 Legislative Update***

***August 7, 2020***

Today's short update discusses the ongoing negotiations over the next phase of COVID-19 legislation, and the issues related to the proposed use of Executive Orders to implement various aspects of COVID-19 relief policy.

### ***Status of the Deal***

***"It was a disappointing meeting."***

***Senate Minority Leader Schumer (D-NY) at the conclusion of Friday's COVID-19 negotiations***

**Stuck in the mud:** After two weeks of negotiations, there is still scant evidence that a breakthrough is imminent in negotiations over the next phase of COVID-19 legislation. It is becoming clear that a successful conclusion to negotiations is far from guaranteed, and a deal will not come any sooner than next week. At the conclusion of short talks on Friday, Democrats declared the meeting a disappointment. Secretary Mnuchin said no progress had been made and that he would recommend that the President take executive action this weekend.

- **Distance in the numbers:** Democrats came into negotiations seeking \$3.4 trillion in relief, and Republicans and the White House have insisted that a final number be below \$2 trillion, with a number of Republicans expressing serious concerns about even a \$1 trillion cost.
- **Difference in priorities:** The difference in numbers reflects a significant difference in the underlying policy priorities of the parties. Democrats want a focus on providing more funds aid to state and coal governments, rental assistance, extending the federal supplement to unemployment benefits. Republicans want to focus on ensuring that state and local governments spend the funds that have already been provided to them via the *CARES Act*, on limiting the federal unemployment supplement in order to prioritize a return to work, and helping renters through an eviction moratorium rather than rental assistance.
- **Threat of Executive action:** This week the White House threatened to accomplish a variety of COVID-19 policy goals through Executive Orders, and it possible that President Trump could begin signing orders as soon as this weekend. The practicality and legality of these orders is the subject of significant debate (as discussed below).

### ***Executive Branch Options***

**Possible Actions:** As negotiations between the White House and Congress broke down, President Trump expressed a willingness to attempt unilateral action to provide some relief to the US economy. Chief of Staff Mark Meadows and Treasury Secretary Steven Mnuchin indicated today that they would recommend to the President that he sign some executive orders as early as this weekend.

**Potential topics of executive orders:**

- **Renew Federal Eviction Moratorium:** The eviction moratorium put in place for tenants by the CARES Act expired July 25, but due to the 30-day notice requirement, the moratorium actually ends August 24. In June, Housing and Urban Development (HUD) already extended the moratorium on foreclosures and evictions for homeowners. President Trump could use an executive order to renew the moratorium for tenants as well.
- **Stop Collection of Payroll Taxes:** The White House has prepared a draft executive order temporarily suspending the payroll tax. If President Trump signs the order, he will order the IRS to stop collecting payroll taxes from employee paychecks. It is unclear if employers would pass on savings to employees, as the White House can only [suspend collection](#) rather than forgive repayments. However, this idea gained momentum after a [Wall Street Journal Op-Ed](#) by two conservative economists called upon Trump to declare a “national emergency”.
- **Extend Enhanced Unemployment Benefits:** The Trump administration believes it can tap up to \$81 billion of unspent money from the \$150 billion allotted to state and local governments in the CARES Act. This executive order would allow states to offer jobless citizens between \$200 and \$600 a week. However, a [survey](#) by the National Association of Budget Officers found that while much of the money was unspent, three quarters of the \$150 billion had already been committed for specific purposes. This could prevent implementation of this executive order.
- **Halt Student Loan Payments:** The CARES Act suspended payments, interest, and collections on federal student loans for six months under the CARES Act. These protections expire September 30, right before the presidential elections. President Trump could simply extend the existing student loan payment suspension and interest freeze. He previously used this authority at the start of the pandemic in March.

**Legality:** It is unclear whether all of the executive orders considered above would be legal. In fact, there are mixed views on these legal issues on both sides of the political aisle:

- **White House:** The Trump administration appears to be on strong legal footing to renew the eviction moratorium and halt student loan payments. The payroll tax order may also be within his power as long as the order is limited to a suspension rather than forgiveness. The White House is less confident regarding the controversial unemployment order. The administration will likely argue that no language in the *CARES Act* explicitly prohibits Trump from tapping state and local pandemic aid to extend unemployment insurance. However, White House Economic Advisor Larry Kudlow [stated](#) earlier: “We have got to fix and extend the unemployment issue right now... I don't think that can be done administratively. I think that requires an act of Congress.”
- **Democrats:** Congressional Democrats pushed back on the President’s ability to offer relief through executive action, particularly in regard to the proposed executive order on unemployment benefits. Speaker Pelosi [commented](#) that while Trump “may be able to extend the moratorium on evictions”, the

other executive orders were non-starters. “You can’t do the money without the Congress of the United States. The power of the purse begins in the House,” Pelosi said. “The executive actions the White House has floated in the press are illegal and aren’t worthy of attention or discussion,” House Appropriations Committee spokesman Evan Hollander said [in a statement](#). However, any legal challenge would be unlikely to be resolved before Election Day, possibly discouraging Democrats from pursuing this route.

### **Key Takeaways**

**Failure to launch:** As we said in our most recent updates, any fruitful negotiation is predicated on a level of GOP unity that has yet to materialize. That lack of harmony was on full display this past week when a plan to force Democrats into tough messaging votes went awry after Republicans couldn't manage to get behind a single amendment. This continues to be the fundamental problem, and until this group is marshaled by an engaged President, or spooked by external forces, it will take an unlikely capitulation by Democrats to get them behind a bill bigger than the HEALS baseline. Today's mixed jobs report probably had the opposite effect.

**Sometimes things have to fall apart before you can pick up the pieces:** Everyone from the press corps to the stock market hive mind has been far too sanguine about the inevitability of a deal in the face of obvious troubles. The belated realization that this effort is in the brink of total collapse could be enough to elicit a negative market reaction, or at least a sufficiently ominous news cycle, to break through to a President who is acutely focused both on the Dow Jones as well as the cable narrative of the day.

**No better than 50/50:** Any optimism about a swift resolution has nothing to do with the existing dynamics or any emerging plan, but rather a function of perceived necessity – chiefly, the idea that Republicans will be unwilling to sacrifice their Senate majority makers (and perhaps Trump's re-election bid) over born-again deficit concerns. But if the past two weeks have reminded us anything, it's that the current inertia favors a much broader swathe of the conference that is insulated from 2020 electoral pressures. It's ultimately up to the President to decide whether he gets more political mileage out of pumping trillions more into the economy or trading recriminations with DC Democrats. At any rate, if there is going to be a near-term deal, the next two-to-three days are absolutely critical.

**Loose ends:** Even if August yields no deal, lawmakers still need to come back and settle on a path forward to keep the government lights on, likely with a continuing resolution (CR) through the election, as well as legislation to address the expiring surface transportation bill. This necessary September vehicle could serve as a second bite at the apple for Congress to tackle some or all of the COVID-19 relief items under consideration, including the PPP program which will formally lapse tomorrow.